



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, DC

Office of the General Counsel

22 JAN 1997

MEMORANDUM FOR COLONEL DRAKE (SAF/MIJ)

FROM: SAF/GCA

SUBJECT: PBD 380 and Military Housing Privatization Authority

PBD 380 directed the Air Force to "consider the BRAC related family housing project at Travis AFB for public/private ventures. [The] Air Force should provide a report to USD\9A&T) on the applicability of public/private venture initiatives to BRAC projects." In response to the PBD, you have asked for a legal opinion on this subject and have included for our consideration a memorandum from the Director of the DoD Housing Revitalization Support Office dated November 22, 1996, which includes the following:

We have been informed by OSD General Counsel that the Department of Defense does not have the authority to transfer BRAC funds to the Family Housing Improvement Fund. Because use of new housing privatization authorities may only be funded out of the Family Housing Improvement Fund, this lack of authority currently precludes using the Military Family Housing Privatization Initiative with BRAC Housing projects.

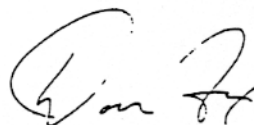
We agree that the annual Military Construction Appropriations Act, which appropriates funds to the various BRAC accounts, provides no legal authority to transfer those funds to either the DoD Family Housing Improvement Fund or the DoD Military Unaccompanied Housing Improvement Fund.<sup>1</sup> "Transfer authority" is generally understood to refer to funds that have already been appropriated. PBD 380, on the other hand, concerns the distribution of and level of funding for future fiscal years. The lack of legal authority to transfer funds that have been appropriated has little relevance to the budgeting process reflected in PBD 380.

The only reference to base closure we have identified in the housing privatization legislation is found at 10 U.S.C. § 2878. Subsection (a) of that section provides that the Secretary concerned may convey or lease property to private persons and use the proceeds to carry out housing privatization activities authorized by other provisions of the new law. Subsection (b) states that this authority to lease or convey does not apply to property located "at or near a military installation approved for closure under a base closure law." 10 U.S.C. § 2878(b). This provision does not prohibit using the new privatization authority to construct housing units at installations receiving additional personnel and dependents as a result of the base closure process.

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<sup>1</sup> These accounts were established by the Public Law 104-106 and are now codified at 10 U.S.C. § 2883.

In summary, we have found nothing in the housing privatization law that would preclude using that authority to acquire housing at "receiving" installations. Nor do we believe the lack of transfer authority between the BRAC and housing improvement accounts is of any legal significance to this question. We have coordinated this opinion with SAF/GCN.

A handwritten signature in black ink, appearing to read "Don Fox", with a stylized flourish at the end.

Don W. Fox  
Office of the General Counsel